

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

(1) Udai Lal & Anr. Vs. The State of Rajasthan
(D.B. CRIMINAL APPEAL NO.747/2003)

(2) Daulat Ram Vs. State of Rajasthan
(D.B.CRIMINAL APPEAL NO.653/2003)

D.B. Criminal Appeals under Section 374(2)
Cr.P.C. against the judgment dt.16.5.2003
passed by the Additional Sessions Judge,
Nimbahera in Sessions Case No.65/1999.

Date of Judgment: November 14, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK MOHTA

Mr.R.K.Charan, for the appellants

Mr.O.P.Rathi, Public Prosecutor

BY THE COURT: (PER HON'BLE MR.MATHUR J.)

1. The appellants Udai Lal, Smt.Ganga Bai and Daulat Ram stood trial on the charge of murder of one Mst.Sunanda and her two minor sons namely Ajay and Vijay in the court of Additional Sessions Judge, Nimbahera. The learned Judge by the impugned judgment dated 16.5.2003 has convicted the appellants of offence under Section 302/34 I.P.C. and sentenced

each of them to imprisonment for life and to pay a fine of Rs.3000/-; in default of payment to further undergo one Year's rigorous imprisonment. They have also been convicted of offence under Section 201 I.P.C. and sentenced to 2 years rigorous imprisonment and to pay a fine of Rs.1000/-; in default of payment of fine to further undergo 6 months rigorous imprisonment. These two appeals arise from the said judgment.

2. The factual scenario as emerged during the trial is that deceased Mst.Sunanda was resident of Jalgav in State of Maharashtra. She had married with one Banshi Lal. Out of the said wed lock she gave birth to four children. She separated from her husband and started living in Jalgav. In the same town the son of appellant Smt.Ganga Bai namely Ratan Lal also used to run a Stall of selling Bhelpuri. Mst.Sunanda came in contact with said Ratan Lal and developed affairs. They started living as husband and wife. Mst.Sunanda out of the relations with Ratan Lal gave birth to two deceased kids namely Ajay and Vijay. Ratan Lal left Jalgav with Sunanda and returned to his village Morvan, District, Chittorgarh. This relation was not approved by appellant Smt.Ganga Bai, the mother of Ratan Lal.

Thus, Ratan Lal shifted to City of Udaipur in a rented house of P.W.6 Naresh Kumar. The prosecution case is that on 31st August, 1999 at about 2 P.M. P.W.29 Ram Lal presented himself at Police Out-post, Mangalwad and gave an oral First Information Report to the effect that in the afternoon at about 12-1 while he was in the field grazing cattle, the high rised voice of P.W.3 Shamu a minor girl from the field of Shanti Lal attracted him. She was shouting that a dead body of a lady was lying in a trench. He along with P.W.4 Khema rushed to the spot. A part of the body namely palm out of the mud in the trench was visible. They also found the dead bodies of two children dumped in the trench. They suspected that some miscreants after killing them dumped the three bodies in the trench. On this information police registered a case of offence under Section 302 & 201 I.P.C. and proceeded with investigation. Mst.Ganga Bai and Udai Lal were arrested on 6.9.99. Appellant Daulat Ram was arrested on 9.9.99. The police after usual investigation laid charge-sheet against three accused appellants for offence under section 302 & 201 I.P.C. The appellants denied the charges levelled against them and claimed trial. The prosecution in order to prove the following piece of

circumstances adduced oral and documentary evidence.

3. As against appellant Smt.Ganga Bai the prosecution relied on following piece of circumstances:-

(1) The deceased was last seen in the company of appellant Smt.Ganga Bai.

(2) The verification of place of incident at the instance of appellant Smt.Ganga Bai.

(3) The recovery of weapon of offence namely Dharia, spade and Kulhari.

(4) Recovery of blood-stained clothes of appellant Smt.Ganga Bai.

(5) Recovery of anklet of the deceased in pursuance of the information given by appellant Ganga Bai.

4. As against appellant Udai Lal the prosecution relied on following piece of circumstances:-

(1) Recovery of blood-stained Dharia.

(2) Verification of place of incident at the instance of appellant Udai Lal.

5. As against appellant Daulat Ram the prosecution

relied on following piece of circumstance:-

(1) Recovery of weapon of offences.

6. The appellants in their statement under Section 313 of the Code of Criminal Procedure denied the correctness of the prosecution evidence appearing against them. The defence of each of the appellants was one of simple denial. The trial court having found the prosecution case proved convicted and sentenced the appellants in the manner stated above.

7. We have heard learned counsel for the appellants and perused the record. The post-mortem of three dead bodies was conducted by a Medical Board consisting of Dr.Nitin Mali, Dr.Vinod Jindal and Dr.Parthsarthi. They have proved the post-mortem reports Ex.P39, P40 & P41 respectively. They have also proved the injuries of appellant Udai Lal vide Ex.P44 and appellant Smt.Ganga Bai Ex.P45. It is not necessary to give the details of the post-mortem reports as the same has not been disputed by the learned counsel for the defence.

8. The instant case is of circumstantial evidence. Our endeavor would be to appreciate the evidence on record to satisfy if the prosecution has established each of the

circumstance relied upon satisfactorily and such circumstances are of conclusive nature. In other words the circumstance has to be consistent with the sole hypothesis that each appellant is guilty of the crime imputed to them. Before we proceed to deal with each circumstance, it would be convenient to briefly survey the oral evidence produced by the prosecution.

9. P.W.3 Shyamu and P.W.4 Khema are the witnesses who had first noticed the three dead bodies dumped in a trench. P.W.29 Ram Lal is the informant. P.W.6 Naresh Kumar and P.W.5 Smt.Shanti Devi are the husband and wife. The deceased lived in their house on rent. They are the witnesses of last seen. P.W.7 Smt.Sultana and P.W.8 Mohd. Yunus are the neighbours. They have not supported the prosecution case and as such they were declared hostile. P.W.9 Jagan Nath is a neighbour. He identified the deceased seeing the photograph. He has stated that the appellant Ganga Bai used to often visit deceased Sunanda. P.W.17 Ganga Ram has not supported the prosecution case. As such he has been declared hostile so as P.W.21 Bheru Lal. P.W.18 Suman Bai and P.W.19 Roop Chand are the mother and father respectively of the deceased

Sunanda. P.W.20 Shanta Bai is the aunt of the deceased (mother's sister). The case was investigated by Mohd.Sharif S.H.O., Police Station, Bhadsoda. As he died, the details of the investigation has been given by P.W.33 Shakil Mohd. The other witnesses are formal witnesses i.e. motbirs, photographer and police personnels.

10. Now, we proceed to deal with case of each of appellants:-

GANGA BAI:-

Last seen:-

P.W.5 Smt.Shanti Devi deposed that the deceased Sunanda was tenant in her house on a monthly rent of Rs.200/-. She identified Mst.Sunanda from the photograph Ex.P15 and the two deceased kids Ajay and Vijay by photographs Ex.P10 & Ex.P16. She stated that a part of her house was taken on rent by Ratan Lal. He lived in the said house along with his wife Sunanda and two children namely Ajay and Vijay. The appellant Smt.Ganga Bai used to visit her house. She used to say that her mother-in-law Ganga was not happy with her and she wanted to get rid of her. The witness also stated that the appellant Smt.Ganga in absence of

Sunanda disclosed that she was not her daughter-in-law. She had also not accepted both the children as her grand-sons. She used to pity on her son Ratan for bringing a vagabond lady. In the words of the witness,

“उस समय बोला कि ये मेरी बहू नहीं हैं और इसने मेरे बेटे को न जाने किस तरह कब्जे में कर लिया हैं और उसने उसके बच्चे अजय विजय के बारे में ये कहा कि ये दो किड़े भी मेरे नहीं हैं न जाने कहां से लेकर आई हैं। ”

She further stated that just prior to the date of incident Mst.Sunanda left the house in the company of appellant Smt.Ganga Bai. The child was in the lap of Smt.Ganga. While leaving the house Mst.Sunanda had expressed some doubt as to the motive of appellant Smt.Ganga. She gave the telephone number of her parents and photograph Ex.P19. Sunanda advised her to inform her parents in event she dose not return. She further stated that the next day Smt.Ganga returned alone, collected the goods and returned in a Tempo. On the request of the prosecution this witness was declared hostile. A reading of the cross examination shows that she has not supported the prosecution case as to the participation of other appellant Udai Lal. It appears that in the police statement she had stated that the appellant Ganga returned to the house along with Udai

Lal, collected the goods and took them in a Tempo.

11. P.W.6 Naresh Kumar is the husband of P.W.5 Smt.Shanti Devi. His statement is almost in the line of his wife. He deposed that Ratan Lal had taken their house on rent in July, 1999. He lived in the house along with his wife Sunanda and two children. Ratan Lal is resident of Village Morvan. Sunanda was a resident of Jalgav in the State of Maharashtra. The appellant Ganga Bai lived in village Morvan. She used to visit their house in the City of Udaipur. He also stated that he came to know from his wife P.W.5 Smt.Shanti Devi that Sunanda left the house in the company of her mother-in-law Smt.Ganga. On the next day Ganga Bai returned to their house, made payment of the rent due and took away the house-hold articles. Late he came to know that Sunanda was being killed and her dead body with bodies of her children were found dumped in a trench. However, he denied the fact of visiting their house by Udai Lal along with Ganga Bai. Thus, this witness was also declared hostile by the prosecution.

12. The statement of P.W.7 Smt.Sultana is also almost on the same line so as P.W.8 Mohd. Yunus. They did not support the prosecution, as to implication of Udai Lal,

as such they were declared hostile. There is no reason to discredit the testimony of P.W.5 Smt.Shanti Devi that Sunanda along with two children left the house along with appellant Smt.Ganga Bai. Thus, there is a creditable evidence of deceased Sunanda and her two minor sons were last seen in the company of appellant Smt.Ganga Bai. The another most incriminating circumstance is that on the next day Smt.Ganga returned all alone and took away the belongings of the deceased and vacated the house. Thus, the prosecution has succeeded in establishing the first piece of circumstance against appellant Smt.Ganga Bai by a positive evidence. The circumstance is of conclusive nature pointing towards the guilt of appellant Smt.Ganga Bai.

Verification of place of incident:-

13. In pursuance of the information given by appellant Smt.Ganga Bai vide Ex.P75 the dead bodies of deceased Sunanda, Ajay and Vijay were recovered dumped in a trench in Naiyo Ki Talai near the Nursery of the Soil Conservation Department in village Morvan vide Ex.P56. We are of the view that this piece of circumstance is of

no assistance to the prosecution as the place of recovery of bodies were already in the knowledge of the Police, as is evident from First Information Report Ex.P47. Thus, the place was known to one and all even prior to the information given by the appellant Smt.Ganga Bai vide Ex.P75.

14. As regards the **third circumstance**, in pursuance of the information given by appellant Smt.Ganga Bai vide Ex.P67 a blood-stained Dharia was recovered vide Ex.P53 in presence of Motbirs P.W.11 Naresh Kumar and P.W.31 Shanker Lal. The Dharia was packed and sealed in a packet marked 'E'. As per the FSL report Ex.P77 the Dharia has been found to be stained with blood of human origin. We have not dealt with the linked evidence as the same has not been challenged by the learned counsel for the appellants. Appellant Smt.Ganga Bai has failed to give any explanation as to the presence of human blood on the Dharia. Thus, the prosecution has succeeded in establishing the third circumstance as against appellant Smt.Ganga Bai which is of conclusive nature.

15. The **fourth circumstance** relied upon by the

prosecution as against Smt.Ganga Bai is that in pursuance of information given by her vide Ex.P66 her Blouse and Lehanga stained with blood were recovered vide Ex.P52. They were sealed and packed in a packet marked 'D'. As per the FSL report Ex.P77 the blood on the Blouse and Lehanga has been found of human origin. Appellant Smt.Ganga Bai has failed to give any explanation as to the presence of human blood on her clothes. Thus, the prosecution has succeeded in establishing the fourth circumstance by positive evidence, which is of conclusive nature.

16. The **another circumstance** relied upon by the prosecution as against appellant Smt.Ganga Bai is the recovery of anklet (Paijeb) from the possession of appellant Smt.Ganga Bai vide Ex.P36 in pursuance of information given by her vide Ex.P72. The criticism as against this part of circumstance is that the prosecution has led no evidence to connect anklet recovered with the crime. In other words, there is no evidence of identification of the anklet to connect the appellant with the crime. There is substance in the contention raised by the learned counsel. In absence of evidence of identification, the recovery of anklet cannot be

connected with the crime. Thus, the prosecution has failed to establish this piece of circumstance of recovery of anklet against the appellant, as an incriminating circumstance against the appellant.

17. The **last circumstance** relied upon by the trial court is the motive as against Smt.Ganga Bai. It is evident from the evidence of P.W.5 Smt.Shanti Devi that the appellant Smt.Ganga Bai was not happy with deceased Sunanda, who was already a married lady having four children. She had not accepted the two children as her grand-sons. Thus, the evidence of motive also provides corroboration to other incriminating circumstances.

18. Thus, taking all the circumstances together we are of the view that prosecution has succeeded in establishing the charge as against appellant Smt.Ganga Bai of murdering Sunanda and her two children and thus the conviction and sentence recorded as against Smt.Ganga Bai does not call for interference by this Court.

UDAI LAL:-

19. The first circumstance relied upon as against appellant Udai Lal is the verification of place of the incident. While dealing with the case of appellant Smt.Ganga Bai this aspect of case has already been discussed and for the same reason we are of the view that the prosecution has failed to establish the first circumstance.

20. As regards the second circumstance, a Dharia was recovered vide Ex.P53 in pursuance of the information given by the appellant vide Ex.P68. It is submitted by the learned counsel for the appellant that the information with regard to the recovery of Dharia was made by appellant Smt.Ganga Bai vide Ex.P67 on 8.9.1999 at 7.00 P.M., which just after 20 minutes Udai Lal alleged to have given information vide Ex.P68. The recovery memo is the same i.e. Ex.P53 as against appellant Smt.Ganga Bai as well as Udai Lal. Thus, the place of concealing the Dharia was known to the police prior to the information given by appellant Udai Lal. We find substance in the contention raised by the learned counsel for the appellant. This part of the recovery cannot be said to be a recovery under provision of

Section 27 of the Evidence Act. The Dharia was already recovered in pursuance of the information given by appellant Smt.Ganga Bai and as such the same piece of circumstantial evidence cannot be utilized as against appellant Udai Lal. Thus, the prosecution has failed to establish this piece of circumstance as against appellant Udai Lal.

21. The another circumstance relied upon as against appellant Udai Lal is the recovery of the clothes of the appellant vide Ex.P50 and Ex.P51 in pursuance of the information given by him vide Ex.P65. The recovered shirt and pent stained with human blood were sealed and packed in a packet 'C' and 'C-1' respectively in presence of Motbirs P.W.11 Naresh Sethia and P.W.31 Shanker Lal. As per the FSL report Ex.P77 the human blood on the said clothes have been found to be of human origin. Criticising this piece of circumstance, it is submitted by the learned counsel that injuries have been found on the person of appellant Udai Lal as per injury report Ex.P44. Thus, the presence of blood on his clothes cannot be said to be unusual. The learned counsel relying on a decision of the Apex Court in **Shankerlal Gyarasilal Dixit vs. State of**

Maharashtra reported in **1981 Cr.L.R.(SC) page 616**

submits that in such eventuality the prosecution ought to have got the blood of the appellant Udai Lal analysed in order to avoid any possibility of presence of blood on his clothes that of the deceased only and none else. Thus, this circumstance can also not be said to be of conclusive nature. Be that it may, this circumstance alone is not sufficient to conclude that it was none else but appellant Udai Lal, who committed the murder of Sunanda and her two children. Thus, we are of the view that appellant Udai Lal has not been rightly convicted and sentenced by the trial court and he is entitled to be acquitted of the charges levelled against him.

DAULAT RAM:-

22. The only circumstance as against appellant Daulat Ram is the recovery of spade and Kulhari vide Ex.P54 in pursuance of the information given by him vide Ex.P70. This circumstance hardly connect the appellant Daulat Ram with the alleged crime. No human blood has been found on spade and Kulhari. There is no other circumstance to connect the appellant with the charge of murder of Sunanda and her two children. Thus, we

are of the view that appellant Daulat Ram has not rightly been convicted and sentenced by the trial court and he is entitled to be acquitted of the charges levelled against him.

23. In view of the aforesaid discussion, the D.B.Criminal Appeal No.747/2003 is partly allowed. The conviction and sentence of appellant Smt.Ganga Bai for offence under Section 302 & 201 I.P.C. does not call for any interference and as such the appeal filed by her stands dismissed. She is in Jail. She will undergo the remaining part of the sentence. The appellant Udai Lal is acquitted of the charges i.e. offence under Section 302 & 201 I.P.C. He shall be released forthwith if not required in any other case.

24. The D.B.Criminal Appeal No.653/2003 filed by appellant Daulat Ram is allowed. He is acquitted of the charges i.e. offence under Section 302 & 201 I.P.C. He is on bail. His bail bonds stand discharged.

(MANAK MOHTA) J.

(N.N.MATHUR), J.